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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/390,435	09/07/1999	JOHN G. SPAKOUSKY	6479	6931
25763	7590	10/24/2003	EXAMINER	
DORSEY & WHITNEY LLP INTELLECTUAL PROPERTY DEPARTMENT 50 SOUTH SIXTH STREET MINNEAPOLIS, MN 55402-1498			TRAN A, PHI DIEU N	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 10/24/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/390,435

Applicant(s)

SPAKOUSKY, JOHN G.

Examiner

Phi D A

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 30 July 2003.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-15, 17-21, 35, 38, 40, 41 and 45-52 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1, 3-5, 10-14, 17, 19-21, 35, 38, 40, 41 and 45-52 is/are rejected.

7) Claim(s) 2, 6-9, 15 and 18 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

***Response to Arguments***

1. In view of the Appeal Brief filed on 7/30/03, PROSECUTION IS HEREBY REOPENED. Claims 1-15,17-21,35,38,40-41,45-52 are rejected as set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

2. PRODUCT BY PROCESS CLAIM:

“ The subject matter present is regarded as a product by process claim in which a product is introduced by the method in which it is made. It is the general practice of this office to examine the final product described regardless of the method provided by the applicant.”

**The limitations “ such that prior to placement...wall structure..” is considered product by process limitations and treated accordingly to the above office policy.**

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 1,3,4,5, 10,14,17,19, 20, 21, 24, 35, 40, 41, 45-47, 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller (1962906) in view Obino (4731968).

Mueller shows a discrete, preassembled composite block unit having a first and second walls (10, 11), at least one of which is load bearing for vertical loads and made from a first masonry-type material, each said wall having at least one mortar receiving surface, a connective structure (18) formed of a second, non-masonry type material and connected between the first and second walls(45,44), the connective structure having at least two connectors (17, figure 3), each of the connectors being connected to one of the first and second walls, the block having discrete opposing faces of rectangular areas, the connective structure having arms (19, 20) supporting the at least two connectors and the arms provide a thermal conduction path of limited cross-sectional area relative to either wall face area, at least one connector is an insert type connector and one of the first and second walls having a connector formation that is matingly engaged by the connector, the connector formation being a receptacle and the insert type connector is inserted into the receptacle such that the connector is frictionally engaged by the receptacle, each connector being matingly engaged in one of the first and second walls, at least one connector having sides extending outwardly and received in a dovetail shaped connector formation in the first and second walls, the connector being compressible element, arms of the connectors tapers such that the vertical cross-sectional area of the connective structure decreases as it extends away from the connector formation, the insert type connector being generally V-shaped, at least one of the walls having a surface treatment (the finish surface), at least one of the first and second walls being unitary with the connective structure (once assembled).

Mueller does not show the connective structure is free of direct structural connection to any wall of each adjacent block unit when the block unit is in a wall structure.

Obino discloses the connective structure (3, figure 4) being free of direct structural connection to any wall of each adjacent block unit when the block is in a wall structure.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Mueller to show the connective structure being free of direct structural connection to any wall of each adjacent block unit when the block unit is in a wall structure as taught by Obino because it would enable the tie to connect the walls together without interfering with other wall structure as taught by Obino.

Per claims 45-47, 49, Mueller as modified shows all the claimed limitations. The claimed method steps would have been the obvious method steps of making Mueller's modified block.

5. Claim 11, 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller in view of Obino (4731968) as applied to claims 1 or 45 above and further in view of Young (4866891).

Mueller as modified shows all the claimed limitations except for the connective structure being plastic.

Young discloses a connective structure being plastic to enhance thermal insulation for the wall structure.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Mueller's modified structure to show the connective structure being plastic because it would enhance the insulating property of the wall structure as taught by Young.

Per claim 50, Mueller as modified shows all the claimed limitations. The claimed method steps would have been the obvious method steps of making Mueller's modified block.

6. Claim 12-13, 48, 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller in view of Obino as applied to claims 1, or 45 above and further in view of Stewart Jr.(510720).

Mueller as modified shows all the claimed limitations except for the connective structure having a partition that forms a first cavity with the first wall and a second cavity with the second wall.

Stewart Jr. shows a partition (15) that forms a first cavity with the first wall and a second cavity with the second wall to enable the selective pouring of insulation in the wall structure.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Mueller's modified structure to show the connective structure having a partition that forms a first cavity with the first wall and a second cavity with the second wall because it would enable the selective pouring of insulation in the wall structure as taught by Stewart Jr.

Per claim 13, Mueller as modified shows all the claimed limitations except for the first cavity being larger than the second cavity.

Stewart Jr. further shows the first cavity (23) being larger than the second cavity (24).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Mueller's modified structure to show the first cavity being larger than the second cavity because it would enable the filling of more insulating material in the first cavity as taught by Stewart Jr.

Per claims 48, 51 Mueller as modified shows all the claimed limitations. The claimed method steps would have been the obvious method steps of making Mueller's modified block.

7. Claims 38, 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller in view of Obino as applied to claims 35, 45 above and further in view of Stewart Jr.(510720).

Mueller as modified shows all the claimed limitations except for the block unit having an insulating mass having approximately the same height and width dimensions as the first and second walls, the mass being secured and held by the connective structure so as to provide a barrier to energy movement between the first and second walls.

Stewart Jr. further shows block unit having an insulating mass (21) having approximately the same height and width dimensions as the first and second walls, the mass being secured and held by the connective structure so as to provide a barrier to energy movement between the first and second walls.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Mueller's modified structure to show the block unit having an insulating mass having approximately the same height and width dimensions as the first and second walls, the mass being secured and held by the connective structure so as to provide a barrier to energy movement between the first and second walls because it would enhance the insulation of the wall structure as taught by Stewart Jr.

*Response to Arguments*

8. Applicant's arguments with respect to claims 1-15, 17-21, 35, 38, 40-41, 45-52 have been considered but are moot in view of the new ground(s) of rejection.

*Allowable Subject Matter*

9. Claims 2, 6-9, 15, 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows wall structures.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 703-306-9136. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Phi Dieu Tran A  
October 20, 2003